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| APPLICATION NO.                | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------|-------------|----------------------|---------------------|------------------|
| 10/596,660                     | 06/20/2006  | Vidar Snekkenes      | 128.1265USN         | 8920             |
| 33369                          | 7590        | 04/03/2008           | EXAMINER            |                  |
| FASTH LAW OFFICES (ROLF FASTH) |             |                      | FORTUNA, JOSE A     |                  |
| 26 PINECREST PLAZA, SUITE 2    |             |                      |                     |                  |
| SOUTHERN PINES, NC 28387-4301  |             |                      | ART UNIT            | PAPER NUMBER     |
|                                |             |                      | 1791                |                  |
|                                |             |                      | MAIL DATE           | DELIVERY MODE    |
|                                |             |                      | 04/03/2008          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/596,660             | SNEKKENES, VIDAR    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | José A. Fortuna        | 1791                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 September 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 20 June 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Drawings***

1. Figures 1-2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Information Disclosure Statement***

2. The information disclosure statement filed on September 17, 2006 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner’s initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 5-9 and 13 of copending Application No. 10/504,948. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the claims is the recirculation streams of the present application. However, recycling streams is a common practice in the pulp and papermaking operations and therefore, obvious to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snekkenes et al., (U.S. Patent 6,120,646) .

With respect to claim 1-7, Snekkenes discloses a method for feeding a slurry of cellulose chips and fluid from a low-pressure system to a high-pressure system during a continuous cooking of chemical cellulose pulp (col. 1, lines 12-22), comprising: feeding a slurry of cellulose chips and fluid from a low-pressure system to a high-pressure system (col. 1, lines 12-22) in an arrangement of a sluice feeder (Fig. 4, item 70) between the low-pressure and high-pressure systems for transporting the fluid and cellulose chips

through the sluice feeder, the sluice feeder having a first inlet (Fig. 4, item 72), a second inlet (Fig. 4, item 80), a first outlet (Fig. 4, item 78), and a second outlet (Fig. 4, item 82) defined therein, the first inlet being in operative engagement with the first outlet (col. 6, lines 43-47) and the second inlet being in operative engagement with the second outlet (col. 6, lines 39-41), the first inlet and the first outlet being in operative engagement with the low pressure system (col. 7, lines 50-53), the second inlet and the second outlet being in operative engagement with the high pressure system (col. 7, lines 54-57), the sluice feeder having a rotor with a first through pocket and a second through pocket (col. 1, lines 39-44), the first and second pockets being movable into a first position and a second position (col. 1, lines 39-51), the first pocket being in connection with the low-pressure system when in the first position while the second pocket being in connection with the high-pressure system (col. 1, lines 39-44), the pockets being alternately placed into connection with the high-pressure system and the low-pressure system (col. 1, lines 39-56) where the first pocket, when located in the first position, is in contact with a chip chute (col. 1, lines 23-42) essentially at atmospheric pressure in the low-pressure system (col. 1, lines 15-22) via the first inlet (col. 6, lines 31-33), providing a re-circulation line (Fig. 3, item 54) extending from the first outlet to the second inlet (Fig. 3, item 53c), the re-circulation line having a high pressure pump (Fig. 3, item 57; col. 6, lines 15-17), filling the first pocket with a chips mixture (col. 4, lines 14-21) while at the same time expelling a first expulsion fluid that is present in the first pocket via the first outlet (col. 4, lines 14-21) into the re-circulation line, expelling the chips mixture from the second pocket for transporting the chip mixture inwardly to a treatment vessel in the high-

pressure system (col. 6, lines 59-64), conveying the first expulsion fluid through the re-circulation line to the second inlet of the sluice feeder (col. 6, lines 10-15), while conveying the first expulsion fluid, rotating the rotor so that the first and second pockets are moved from their first position to their second position (col. 6, lines 59-64), and exclusively using the first expulsion fluid expelled from the first outlet of the sluice feeder to expel the chips mixture from the first pocket into the transfer line to the treatment vessel in the high pressure system (Fig. 3, items 54, 53c, and 60). The Examiner notes that Snekkenes indicates only a preference for an additional expulsion fluid (col. 6, lines 17-20).

Snekkenes does not disclose expressly the recycling lines as claimed. However, recycling portion of streams is very well known<sup>1</sup> in the art and therefore, would have been obvious to one of ordinary skill in the art, absent a showing of unexpected results. Even though Snekkenes does not teach adding the make fluid between the pump and the first outlet, nor that the make-up fluid is not obtained from other sources, other than the treatment vessel, nor using the expelled fluid and the make-up fluid exclusively to expel the chips from the first pocket to the transfer line, those modifications amounts to optimization of the process an within the levels of ordinary skill in the art absent a showing of unexpected results. It has been held that “[T]he discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art. *In re Antoine*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); *In re Aller*, 42 CCPA 824, 220 F.2d 454, 105 USPQ 233 (1995).

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<sup>1</sup> See references cited in the PTO-892 form, (references cited by the examiner).

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure in the art of "Charging and Discharging a Digester."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José A. Fortuna whose telephone number is 571-272-1188. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/José A Fortuna/  
Primary Examiner  
Art Unit 1791

JAF